

purpose of the provision is "to protect an individual from squandering or losing to creditors valuable future benefits before receiving them." 61 Opinions of the Attorney General 541, 543 (1976).

House Bill 462 would give lottery annuity prize winners the option of retaining the annuity or reaching an agreement with a third party to exchange the annuity for an immediate lump sum payment. I am advised by the Lottery Agency that there may be severe tax consequences to prize winners resulting from the mere existence of a statute allowing prize winners such an option. The Lottery Agency has been advised that the IRS has interpreted its regulations to provide that the doctrine of "constructive receipt" would apply to a lottery prize disbursement system in which the only impediment to assignment is the free will of the prize winner. Under constructive receipt, the entire "Lotto" prize would be taxable in the year that the prize is won, even if the winner chooses to retain the annuity payment method.

For example, if a person wins a "Lotto" prize of \$1 million, he would be entitled to annuity payments of \$50,000 for 20 years. Even if the winner chose to retain the annuity, his immediate tax liability would be approximately \$198,000, as if he had received the entire prize, even though he would receive only \$50,000 the first year. Under constructive receipt, virtually every "Lotto" winner would be forced to seek assignment to receive a lump sum payment in order to meet the tax liability. This would present an undesirable situation for many reasons. However, the primary problem with such a scenario is that it leaves the prize winner at the mercy of finance companies, which would offer heavily discounted lump sum payments to persons desperate to meet an enormous tax obligation.

House Bill 462 also would direct the Lottery Agency to examine the feasibility of instituting a "player's choice" system of dispensing "Lotto" tickets. This is a method of selling lottery tickets currently used in Ohio. In the Ohio player's choice system, the player decides at the time the ticket is purchased whether he would prefer to receive an annuity or a lump sum payment from the Ohio lottery agency. However, because the choice is made before a prize is won, constructive receipt would not apply. Despite the fact that the player's choice system is carefully devised to avoid the constructive receipt scenario, it creates, in my view, an equally undesirable problem. Many, if not most, lottery players purchase tickets with no knowledge of the tax consequences of winning, even in a system with only an annuity payment method. A player's choice system forces people to make an uninformed choice concerning an unlikely event. Because most people regard winning a lottery grand prize as an improbable occurrence, they are likely to devote little thought to what payment method would best suit their needs. That choice could have severe consequences.

I believe that it would be desirable for lottery winners to have more payment options available to them than exist under current law. However, House Bill 462 could have disastrous unintended consequences. Unsuspecting lottery winners could find themselves facing enormous tax obligations. As a result, there would, no doubt, have been certain finance companies willing to exploit vulnerable prize winners. Even though the bill's contingency provision would nullify the bill if the IRS found that constructive receipt would apply under House Bill 462, there are far too many unanswered questions concerning lottery annuity assignment to endorse the principles embodied in the bill.